

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Natnari Linwong	Team: Team # 2	CCRB Case #: 201115552	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/02/2011 7:00 PM	Location of Incident: East 148th Street and Brook Avenue	Precinct: 40	18 Mo. SOL 6/2/2013	EO SOL 6/2/2013	
Date/Time CV Reported Fri, 12/02/2011 8:04 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 12/02/2011 8:04 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Anthony Rumph	06686	913189	NARCBBX
2. SGT Seth Lynch	02266	932932	NARCBBX
3. LT Persio Polanco	00000	914530	NARCBBX

Officer(s)	Allegation	Investigator Recommendation
A.LT Persio Polanco	Abuse: Lieutenant Persio Polanco supervised the stop of § 87(2)(b)	
B.SGT Seth Lynch	Abuse: Sergeant Seth Lynch searched the car in which § 87(2)(b) was an occupant.	
C.LT Persio Polanco	Abuse: Lieutenant Persio Polanco refused to provide his name and shield number to § 87(2)(b)	
D.SGT Seth Lynch	Abuse: Sergeant Seth Lynch refused to provide his name and shield number to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

On December 2, 2011, § 87(2)(b) filed a CCRB complaint via the call processing system (encl. 2A-B).

On December 2, 2011, at approximately 7:00 p.m., § 87(2)(b) was in her parked car at East 148th Street and Brook Avenue in the Bronx when she was approached by Lieutenant Persio Polanco, Sergeant Seth Lynch, and Detective Anthony Rumph. She was not arrested or issued a summons. The following allegations resulted from the incident:

- **Allegation A – Abuse of Authority: Lieutenant Persio Polanco supervised the stop of** § 87(2)(b)
§ 87(2)(g)
- **Allegation B – Abuse of Authority: Sergeant Seth Lynch searched the car in which** § 87(2)(b) **was an occupant.**
- **Allegation C – Abuse of Authority: Lieutenant Persio Polanco refused to provide his name and shield number to** § 87(2)(b)
- **Allegation D – Abuse of Authority: Sergeant Seth Lynch refused to provide his name and shield number to** § 87(2)(b)
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)

This case was ineligible for mediation § 87(2)(g)

§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- *Hispanic female, age § 87(2)(b) 5'4" tall and 145 with red hair and brown eyes.*
- § 87(2)(b)

CCRB Testimony

On December 20, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 3A-G).

On December 2, 2011, at approximately 7:00 p.m., § 87(2)(b) was driving to her hair salon and stopped at East 148th Street and Brook Avenue in the Bronx to purchase gum and cigarettes. There is a bodega located at that intersection, and § 87(2)(b) legally parked her car, a black 2009 Lincoln with black tints, directly across the street from the bodega. As she crossed the street to enter the store, she noticed three males at the corner standing by a tan or brown Hyundai sedan. These males were identified through investigation as Lieutenant Persio Polanco, Sergeant Seth Lynch, and Detective Anthony Rumph.

§ 87(2)(b) entered the store, withdrew money from an ATM, and purchased gum and cigarettes. She spent five minutes in the store and only spoke to the store clerk. She did not interact with anyone else either in the store or outside of the store. After leaving the store, § 87(2)(b) walked towards her vehicle. She noticed that the three officers were now in their car, which was parallel parked adjacent to § 87(2)(b)'s car. § 87(2)(b) entered her car and put down both front windows, hoping that the driver of the Hyundai would realize that she wanted to leave, as he had blocked her in the parking spot.

The three officers exited the vehicle and surrounded § 87(2)(b)'s car. Detective Rumph came to the driver side, Sergeant Lynch went to the front passenger window, and Lieutenant Polanco stood at the back of the car.

Detective Rumph asked § 87(2)(b) what she was doing, why she was in the store, what she purchased, why she was so quick, and where she was beforehand. § 87(2)(b) answered all the questions and told him that he could check her ATM receipt. As she spoke with Detective Rumph, Sergeant Lynch reached through the front passenger window and searched through § 87(2)(b)'s coat and purse, which contained pepper spray. § 87(2)(b) asked Sergeant Lynch why he was searching her belongings and stated that she did not know who the officers were. She continuously asked for identification or some clarification as to who they were.

As § 87(2)(b) asked questions, Detective Rumph eventually asked her to step out of the car and to the back. § 87(2)(b) complied. However, § 87(2)(b) kept looking back to see the inside of her car as Sergeant Lynch continued searching her car. Sergeant Lynch searched the glove compartment and front area of the car. He never went into the trunk. Detective Rumph kept telling § 87(2)(b) not to look behind her and that she must keep her eyes on him. § 87(2)(b) was nervous and was fidgeting. Detective Rumph asked her why she was fidgeting and § 87(2)(b) explained that she was afraid as she was surrounded by three unknown males.

Detective Rumph explained that females like § 87(2)(b) are used as drug mules. Sergeant Lynch then asked § 87(2)(b) if she knew that it was illegal to have pepper spray as a civilian. § 87(2)(b) answered that she knew but also knew that it was illegal for them to be treating her in this manner. Sergeant Lynch did not confiscate the pepper spray. § 87(2)(b) asked again for an explanation of what was going on. § 87(2)(b) again asked for identification from the officers. Sergeant Lynch told § 87(2)(b) that he was sure that she would have talked her way out of any previous police interaction she may have had. The officers did not frisk § 87(2)(b) or search her person.

The officers walked back to their car. § 87(2)(b) asked the officers again for identification, stating that she did not know whether they were police officers or civilians. § 87(2)(b) explicitly stated that she wanted names and badge numbers from all of the officers as well as their command. Detective Rumph gave her his name. § 87(2)(b) asked for badge numbers. None of the officers answered, but she saw “6686” on a badge around Detective Rumph’s neck. The officers then left the scene.

§ 87(2)(b)’s cigarettes, a \$100 bill, diet pills, and an iPod were missing from her car after the search. The missing items were reported to IAB under log #11-56453.

NYPD Statements:

Subject Officer: LIEUTENANT PERSIO POLANCO

- *Hispanic male, age § 87(2)(b), 6’3” tall and 280 lbs. with black hair and brown eyes.*
- *Lieutenant Polanco worked from 12:55 p.m. on December 2, 2011 to 12:30 a.m. on December 3, 2011. He was working with Sergeant Seth Lynch and Detective Anthony Rumph. They were on patrol conducting narcotics observation in an unmarked gray Hyundai.*

Memo Book

Lieutenant Polanco had no memo book entries regarding this incident.

CCRB Testimony

Lieutenant Polanco was interviewed at the CCRB on April 19, 2012 (encl. 6A-E).

On December 2, 2011, at approximately 7:00 p.m., Lieutenant Polanco, Sergeant Lynch, and Detective Rumph were inside their parked car, conducting observations at East 148th Street and Brook Avenue in the Bronx. Approximately five minutes after the officers had arrived at the location, a car pulled up with out-of-state license plates. Lieutenant Polanco did not recall which state the plate was from. Lieutenant Polanco did not recall if she was legally parked.

§ 87(2)(b) exited the vehicle empty-handed, walked to East 148th Street, and returned to her car about a minute later. She did not interact with anyone in the street. Lieutenant Polanco lost sight of § 87(2)(b) for a few seconds. When she returned to her vehicle, she still had nothing in her hands. Lieutenant Polanco did not recall whether § 87(2)(b) got back into her car. § 87(2)(b)’s actions caused the officers to suspect her of narcotics activities. Lieutenant Polanco added the following factors as to why § 87(2)(b) was suspected: it was a drug-prone location where numerous narcotics investigations were conducted, § 87(2)(b) had out-of-state plates, and she left her window open when she exited the car and returned soon after she had left.

The officers exited the vehicle. Sergeant Lynch and Detective Rumph approached § 87(2)(b) and Lieutenant Polanco stayed to the back of § 87(2)(b)’s car for rear security. Their shields

were clearly visible and the officers stated that they were the police. Sergeant Lynch and Detective Rumph had the primary interaction with § 87(2)(b). They asked why she was in the area and § 87(2)(b) did not provide an answer but immediately became angry. She later stated that she entered the nearby bodega, but the officers saw nothing in her hands. Lieutenant Polanco did not have a direct view of the entrance of the bodega and could not tell whether § 87(2)(b) had entered the store. The officers shone their flashlights into § 87(2)(b)'s car to check for weapons or any other potentially dangerous objects. Lieutenant Polanco did not recall Sergeant Lynch going into the vehicle at any point or searching inside of it including through § 87(2)(b)'s bag. All three officers attempted to explain to § 87(2)(b) why she was being stopped. However, § 87(2)(b) was not listening to the officers. She shouted at them, used profanity, and said they had no reason to stop her. The officers walked away to avoid further antagonizing § 87(2)(b). § 87(2)(b) only asked Detective Rumph for his information, which he provided to her. The stop lasted less than two minutes.

Subject Officer: SERGEANT SETH LYNCH

- *White male, age § 87(2)(b), 5'11" tall and 185 lbs. with black hair and hazel eyes.*
- *Sergeant Lynch worked from 3:30 p.m. on December 2, 2011 to 2:00 a.m. on December 3, 2011. He was part of the observation team with Detective Rumph and Lieutenant Polanco. He was dressed in plainclothes and was assigned to an unmarked gray Hyundai.*

Memo Book

Sergeant Lynch had no memo book entries regarding this incident.

CCRB Testimony

Sergeant Lynch was interviewed at the CCRB on March 14, 2012 (encl. 5A-E).

Sergeant Lynch observed § 87(2)(b) parking at a fire hydrant. § 87(2)(b) exited the vehicle, walked towards East 148th Street, and then returned. It was dark outside and Sergeant Lynch was not able to see her interacting with anyone or enter any buildings. Sergeant Lynch described the neighborhood as a high-crime area where he had made numerous arrests relating to narcotics and weapon sales. However, Sergeant Lynch did not see § 87(2)(b) do anything criminal. Because she left her car parked in front of a fire hydrant, Sergeant Lynch suspected that she might be buying narcotics. Sergeant Lynch lost sight of § 87(2)(b) for about a minute. She then returned to her car. She was outside of the car for less than two minutes. It was at this point that Sergeant Lynch and Detective Rumph decided to stop her.

All the officers exited the vehicle and approached § 87(2)(b) who was standing outside her car. Detective Rumph initiated the conversation with § 87(2)(b). § 87(2)(b) was immediately combative, asking the officers why they stopped her. Detective Rumph asked § 87(2)(b) why she was on the street and § 87(2)(b) replied that she went to the store. However, Sergeant Lynch never saw § 87(2)(b) enter a store. Detective Rumph asked § 87(2)(b) for her identification so that he could record that he spoke with her, but § 87(2)(b) never provided any identification to the officers. Sergeant Lynch noted that § 87(2)(b) was free to go at any point and that early on in the interaction, it was clear that § 87(2)(b) was not involved in any criminal activity. However, she was becoming irate making it difficult for the officers to just walk away.

Sergeant Lynch never reached into the car, but looked inside with his flashlight. He never searched the car or looked into § 87(2)(b)'s bag. No other officers reached into the car or searched § 87(2)(b)'s bag. § 87(2)(b) asked Sergeant Lynch for his information, and he

provided both his name and shield number. However, it did not appear as though the information made any impression on § 87(2)(b) because of her irate manner. § 87(2)(b) was not issued a summons for the illegal parking.

Subject Officer: DETECTIVE ANTHONY RUMPH

- *Black male, age § 87(2)(b), 5'10" tall and 240 lbs. with salt-and-pepper hair and brown eyes.*
- *Detective Rumph worked from 4:00 p.m. on December 2, 2011 to 2:00 a.m. on December 3, 2011. He was assigned to a narcotics observation team with Sergeant Lynch and Lieutenant Polanco. They were dressed in plainclothes and assigned to an unmarked gray Hyundai.*

Memo Book

Detective Rumph had no memo book entries regarding this incident.

CCRB Testimony

Detective Rumph was interviewed at the CCRB on February 9, 2012 (encl. 4A-E).

§ 87(2)(b) exited her vehicle, which had out-of-state license plates, and walked towards East 148th Street. Her hands were empty. Detective Rumph did not see § 87(2)(b) enter any stores or interact with anyone on the street. When § 87(2)(b) returned to her vehicle, she simply sat inside and did nothing. Her head was down. Detective Rumph had observed § 87(2)(b) for about two minutes at this point. Detective Rumph drove up to § 87(2)(b) and exited the vehicle. Detective Rumph went to the driver's side and Sergeant Lynch and Lieutenant Polanco went to the passenger side. Detective Rumph and Sergeant Lynch looked into the vehicle with flashlights. They never went inside the vehicle or searched it.

Detective Rumph asked § 87(2)(b) what she was doing in her vehicle. § 87(2)(b) said she just left the store but Detective Rumph knew this not to be the case as he had maintained visual contact of the store and never saw § 87(2)(b) enter or exit the store. Detective Rumph then asked to see her identification and § 87(2)(b) became agitated. She never provided her identification but continued to get loud.

Detective Rumph asked § 87(2)(b) to step out of her vehicle, and she complied. § 87(2)(b) asked Detective Rumph for his information, and he provided his name and displayed his shield. Detective Rumph did not recall whether § 87(2)(b) asked Sergeant Lynch and Lieutenant Polanco for their information. Detective Rumph did not recall § 87(2)(b) having pepper spray in her possession. Detective Rumph may have partially explained to § 87(2)(b) why he stopped her. However, she was very animated on the scene, and it became apparent that she was not listening to the officers. Detective Rumph never told § 87(2)(b) that she might have been a drug mule. Detective Rumph and Sergeant Lynch determined that no criminal activity was at hand left the scene.

NYPD Documents

Stop-and-Frisk Report/Log (encl. 7A, 14C)

No stop-and-frisk reports were filed for this incident.

SPRINT (encl. 14B)

There were no SPRINT reports for the time and location of the incident.

Status of Civil Proceedings (encl. 10A)

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of July 10, 2012, with regard to this incident.

Civilian Criminal History (encl. 11A)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History (encl. 1D)

This is the first CCRB complaint filed by § 87(2)(b)

Subject Officers' CCRB Histories (encl. 1A-C)

- Lieutenant Polanco has been a member of the service for 18 years and there are no substantiated CCRB allegations against him.
- Sergeant Lynch has been a member of the service for eight years and there is one substantiated CCRB allegation against him. In case #200900106, the board determined that Sergeant Lynch improperly supervised the entry and search of a residence. The board recommended charges. The NYPD declined to prosecute the case and issued Sergeant Lynch command discipline B.
- Detective Rumph has been a member of the service for 20 years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

Lieutenant Polanco and Sergeant Lynch acknowledged interacting with § 87(2)(b) § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Lieutenant Persio Polanco supervised the stop of § 87(2)(b)

It is not in dispute that the officers stopped § 87(2)(b) after she returned to her car. § 87(2)(b) stated that she legally parked her car, saw the officers on foot on the corner, entered a bodega and bought gum and cigarettes, and returned to her car after five minutes. She stated that because the officers' vehicle was blocking her exit, she entered her car and lowered her windows in hopes that they would realize she wanted to leave and would move their car. She stated that the officers then approached her, and Detective Rumph asked her about her activities inside the store and what she had purchased.

The officers gave the following reasons for the stop: § 87(2)(b) had out-of-state license plates, left her windows open when she exited the car, was empty-handed both when she exited and when she returned to her car, was outside of her vehicle for only one or two minutes, and sat inside the car and did nothing when she returned. They also stated that the location is drug-prone, and Sergeant Lynch specified that he suspected that § 87(2)(b) had bought narcotics. They denied seeing § 87(2)(b) enter the bodega, though Sergeant Lynch and Lieutenant Polanco said they lost sight of her briefly.

A stop requires reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 0A-K). Innocuous behavior

alone will not generate a founded or reasonable suspicion that a crime is at hand. People v. Hampton, 606 N.Y.S.2d 628 (1994) (encl. 0L-N).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation B – Abuse of Authority: Sergeant Seth Lynch searched the car in which § 87(2)(b) was an occupant.

Allegation C – Abuse of Authority: Lieutenant Persio Polanco refused to provide his name and shield number to § 87(2)(b)

Allegation D – Abuse of Authority: Sergeant Seth Lynch refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that Sergeant Lynch searched the front portion of her car, including the glove compartment and her coat and purse, which were inside the car. She also alleged that she asked all three officers for their names and shield numbers, and that only Detective Rumph provided his name. She obtained his shield number by reading it from his nameplate.

All three officers stated that they looked into the vehicle with their flashlights, but denied that any officer entered or searched the vehicle. Lieutenant Polanco stated that § 87(2)(b) only asked Detective Rumph for his name and shield number. Sergeant Lynch stated that § 87(2)(b) asked him for his name and shield number, and that he provided it, but it did not appear that she was paying attention because she was irate. Detective Rumph stated that he provided his information to § 87(2)(b) but he did not recall whether she asked the other officers for their information.

§ 87(2)(g)
[REDACTED]

§ 87(4-b) § 87(2)(g)
[REDACTED]

§ 87(4-b) § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Team: _____

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date